

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER

This matter is before the Court for review of plaintiff's amended complaint [Doc. #7] under 28 U.S.C. § 1915A.¹

Pursuant to 28 U.S.C. § 1915A, the "court shall review before docketing if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." The Court is to dismiss the complaint, or any portion, if it is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief.

In reviewing a pro se complaint under § 1915A, the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also

¹On December 3, 2009, this Court granted plaintiff time to file an amended complaint and to set forth as to each named defendant the specific factual allegations supporting his claim [Doc. #6]. Plaintiff timely filed his amended complaint on December 21, 2009 [Doc. #7]. Plaintiff paid the full filing fee on December 11, 2009.

weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25 (1992).

A review of the amended complaint indicates that plaintiff's claims regarding the violation of his Eighth Amendment rights (deliberate indifference) survive review and should not be dismissed at this time.

The Court notes that because plaintiff paid the filing fee, he is responsible for serving defendants with a copy of the amended complaint, as well as a copy of this Memorandum and Order, within 120 days of its filing. See Fed. R. Civ. P. 4(m). A review of the Court's file indicates that plaintiff has not served any of the defendants to date. The Court notes that plaintiff may either serve a summons and complaint upon defendants, see Fed. R. Civ. P. 4(c), or obtain from defendants a waiver of service of summons. See Fed. R. Civ. P. 4(d). Plaintiff is advised that he may seek guidance on serving defendants from the Office of the Clerk.

In accordance with the foregoing,

IT IS HEREBY ORDERED that, pursuant to this Court's differentiated case management system, this case is assigned to Track 5B (prisoner actions-standard).

IT IS FURTHER ORDERED that, after either being properly served with a copy of the amended complaint or filing a waiver of service, defendants shall reply to the amended complaint within the

time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure. See 42 U.S.C. § 1997e(g)(2).

Dated this 6th day of January, 2010.

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE